

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LUIS TACURI, TIMOTEO CASTANEDA,

Plaintiffs,

-against-

NITHUN CONSTRUCTION COMPANY,
NIRUL AMIN,

Defendants.

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AMON, United States District Judge:

NOT FOR PUBLICATION

MEMORANDUM & ORDER

No. 14-CV-02908 (CBA) (RER)

BACKGROUND

In May 2014 Luis Tacuri and Timoteo Castaneda (collectively, “Plaintiffs”) brought an action for damages against Nithun Construction Company and its principal Nirul Amin (collectively, “Defendants”) for violations of the Fair Labor Standards Act and New York Labor Law. (ECF Docket Entry (“D.E.”) # 1.) In February 2015 a default judgment was entered in favor of Plaintiffs. (D.E. # 13.)

Seeking to enforce that default judgment, in May 2019 Plaintiffs served on Defendants information subpoenas whose receipt Defendants acknowledged. (D.E. # 14; D.E. # 14-2.) Two months later after having heard nothing from Defendants, Plaintiffs moved to compel a response. (D.E. # 14.) Magistrate Judge Ramon Reyes granted the motion to compel and warned Defendants that “[f]ailure to respond by that date will result in . . . a recommendation that defendants be held in contempt for violation of a court order.” (D.E. dated June 27, 2019.) Despite the warning Defendants again failed to respond, and Plaintiffs moved for contempt. (D.E. # 15.) Magistrate Judge Reyes found that Plaintiffs had made out a prima facie case for contempt, based on Defendants’ failure to respond to the subpoenas despite having acknowledged receipt of them and having been compelled by court order to respond by a certain date. (D.E. # 16 at 4-5.)

On October 23, 2019, this Court held a show cause hearing at which Defendants failed to appear. I then granted Plaintiffs' motion for contempt and ordered the following relief: (1) If Defendants did not respond to the information subpoenas within two weeks, they were required to pay \$100 per day to the Clerk of Court until they responded in full; (2) Defendants were ordered to "pay Plaintiffs forthwith \$2,202.50 in attorneys' fees in connection with Defendants' contempt" and "\$339.00 in connection with service of process costs;" and (3) if Defendants had failed to respond to Plaintiffs' information subpoenas within a month, Plaintiffs would be permitted to move the Court to issue an arrest warrant to bring Defendants before the Court to explain their noncompliance. (D.E. # 28 at 7-8.)

Plaintiffs subsequently indicated that they had "received, via counsel, defendants' full responses to the information subpoenas." (D.E. # 34.) But Defendants had "not made the payments for attorneys' fees and costs." (Id.) I accordingly ordered Defendants to "show cause why they have not paid the fees and costs previously ordered by the Court." (D.E. dated Oct. 26, 2020.) Defendants, through counsel, filed a document stating that "they are unable to pay the amount ordered by the Court due to financial difficulty" and that they "request that the Court enter judgment against Defendants for the amount ordered to be paid." (D.E. # 37.) Plaintiffs deem this response "inadequate," because "defendants have not provided a sworn affidavit to the Court or any documentation substantiating this professed inability to pay." (D.E. # 38.)

CONCLUSION

No later than 14 days after being served with a copy of this Order, Defendants shall file a sworn affidavit in support of their asserted inability to pay the ordered fees and costs. Defendants may attach to the affidavit any documentation which substantiates their claim of an inability to pay

the ordered fees and costs. Plaintiffs shall serve a copy of this Order on Defendants and file proof of service on the docket no later than 10 days after publication of this Order.

SO ORDERED.

Dated: November 17, 2020
Brooklyn, New York

/s/ Carol Bagley Amon

Carol Bagley Amon
United States District Judge